

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
July 25, 2007
9:00 a.m.

Location: 1110 W. Washington
Room 250
Phoenix, Arizona

REPORTED BY:
Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477

WORSLEY REPORTING, INC.
Certified Reporters
P.O. Box 47666
Phoenix, AZ 85068-7666
(602) 258-2310
Fax: (602) 789-7886

(Original)

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1 COMMITTEE MEMBERS PRESENT:

2

3 Gail Clement, Chair

4 Philip McNeely

5 Karen Gaylord (Left at 10:00 a.m.)

6 Jon Findley

7 William (Bill) Bunch

8 Tamara Huddleston

9 Catherine Chaberski

10 Andrea Martincic (Telephonic appearance.)

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1 P R O C E E D I N G S

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3 CHAIRPERSON CLEMENT: We've got a quorum of the
4 Policy Commission, so without any additional words we will
5 begin the July 25th, 2007 Underground Storage Tank Policy
6 Commission meeting.

7 So, we'll start with a roll call, and if Cathy
8 would start on my left, please, and state your name.

9 MS. CHABERSKI: Catherine Chaberski.

10 MS. HUDDLESTON. Tamara Huddleston.

11 MR. MC NEELY: Philip McNeely.

12 CHAIRPERSON CLEMENT: Gail Clement.

13 MR. FINDLEY: Jon Findley.

14 MS. GAYLORD: Karen Gaylord.

15 MR. BUNCH: Bill Bunch.

16 CHAIRPERSON CLEMENT: And on the telephone we
17 have Andrea Martincic, who is the subcommittee chairperson
18 for the Financial Subcommittee, and she's out of town but
19 she will participate by telephone.

20 And just to get the old business out of the way,
21 we're going to run through the approval of the meeting
22 minutes for April and May, and then we'll do an
23 introduction of the new UST Policy Commission Members that
24 we're very, very glad to see today. Thank you for being
25 here.

1 Okay. Did everybody receive the April 25th, 2007
2 UST Policy Commission meeting minutes?

3 Did you have an chance to review them?

4 Any comments, discussion?

5 Is there a motion to approve the April 2007
6 meeting minutes?

7 MS. HUDDLESTON: I so move.

8 CHAIRPERSON CLEMENT: Is there a second?

9 MR. MC NEELY: I second.

10 CHAIRPERSON CLEMENT: All in favor?

11 (Chorus of ayes.)

12 CHAIRPERSON CLEMENT: Okay. The April 25th, 2007
13 UST Policy Commission meeting minutes have been adopted as
14 submitted.

15 Did everybody receive the May 23rd, 2007 UST
16 Policy Commission meeting minutes?

17 Did everybody have a chance to review? Any
18 discussions, questions, changes? No?

19 Is there a motion to approve the May 23rd meeting
20 minutes?

21 MR. FINDLEY: So approved.

22 CHAIRPERSON CLEMENT: Is there a second?

23 MR. MC NEELY: I second.

24 CHAIRPERSON CLEMENT: All in favor?

25 (Chorus of ayes.)

1 CHAIRPERSON CLEMENT: Anyone opposed? No.

2 The May 23rd, 2007 UST Policy Commission meeting
3 minutes have been adopted as submitted.

4 Okay. We are very fortunate today to have at
5 lease two of our new UST Policy Commission Members with
6 us, and just for a brief introduction, if you wouldn't
7 both mind, if you wouldn't both mind introducing
8 yourselves starting with Cathy and your experience in the
9 program and who you are representing and what tank
10 function are you representing on the Policy Commission.

11 MS. CHABERSKI: My name is Catherine Chaberski,
12 and I'm an environmental program manager with the City of
13 Glendale. I'm an environmental engineer with, I guess, a
14 lot of background in different areas, including UST, and
15 I'm representing the cities and towns as owner/operators
16 of USTs.

17 CHAIRPERSON CLEMENT: Welcome.

18 MR. BUNCH: My name is Bill Bunch. I'm with
19 Circle K Stores, Inc., and I'm the environmental of fuels
20 -- excuse me. I'm the manager of environmental and fuels
21 for Circle K. And been in the industry for about 20 years
22 doing a lot of different things, but for the last five or
23 six years focusing on environmental risk management and
24 managing Circle K's portfolio of underground storage
25 tanks.

1 And I'm very happy to be representing the, I
2 guess, the large UST owners in this Policy Commission.

3 CHAIRPERSON CLEMENT: And that means owners of
4 tanks, more than 100 tanks.

5 MR. BUNCH: I think we've slightly exceeded that.

6 CHAIRPERSON CLEMENT: Just barely, huh?

7 And then also just to inform everyone, Karen
8 Gaylord has moved positions. She's now the official legal
9 representative on the UST Policy Commission. She formerly
10 represented small owners and operators that is less than
11 ten tanks, so we're very glad to have Karen back with us,
12 and I know you will do an excellent job in your role as
13 legal representative for the Commission. Thank you.

14 MS. GAYLORD: Thank you.

15 CHAIRPERSON CLEMENT: We have two other new
16 members that have not -- were not able to join us, and let
17 me just give you a brief introduction. Manoj Vyas, who is
18 from the City of Globe, he will be representing the small
19 owners and operators that is less than ten underground
20 storage tanks.

21 And then we also have Theresa Kalaghan, who is
22 with Secor. She's an environmental consultant. She will
23 be representing the environmental consulting community,
24 and she was not able to join us today.

25 And then Joseph will be the official designee to

1 replace Tamara when she's unable to attend the UST Policy
2 Commission meetings, so Joseph Mikitish will also be
3 joining us occasionally, so welcome, Joseph. Glad to have
4 you.

5 MR. MIKITISH: Thank you very much.

6 CHAIRPERSON CLEMENT: Just as an introduction to
7 the new members, we have Commission meetings approximately
8 -- they're scheduled monthly, but typically they've been
9 every other month just because of the nature of the
10 business we've had to deal with has allowed us,
11 particularly in the summer months. We like to schedule a
12 monthly meeting and then have the Policy Commission itself
13 decide whether or not we're going to have the next month's
14 meeting or skip into the following month.

15 We also have two subcommittees. Mr. Hal Gill,
16 who's with us today, is a former -- for many, many years
17 on the Policy Commission, did an incredible job for us as
18 the Technical Subcommittee Chairperson, so we are looking
19 to replace that position, and anyone who has the technical
20 background and the interest, it's a very dynamic committee
21 and it's a very important subcommittee for the Commission.
22 A lot of the real work gets done in the subcommittees.
23 Although they're official Commission meetings, they're
24 more informal. We can do work in a much more interactive
25 approach than at a formal Policy Commission meeting, and

1 so we try to get as much work done in those subcommittees
2 as possible.

3 Okay. Before we go any further, we did want to
4 very much thank the previous Commission Members, many of
5 whom were on the Commission and involved with the UST
6 program even before the Commission was formally put in
7 place by the legislature, and many, many years of
8 dedicated service in this program, and I can't thank the
9 people who were on the Commission previously enough. They
10 made my job much easier. They were dedicated, they were
11 interested, they participated, they did their jobs, and
12 they really brought a lot to the State of Arizona and this
13 program.

14 And in particular, we have Mr. Hal Gill here
15 today, and, Hal, maybe you could just share with us how
16 many years -- you certainly predated my participation in
17 the Commission.

18 MR. GILL: How many years has it been running?

19 MR. MC NEELY: '98. I think you were the
20 original.

21 MR. GILL: That's when I started with the
22 Commission.

23 CHAIRPERSON CLEMENT: And then before that, even
24 when I was with the Arizona Department of Environmental
25 Quality staff member in 1987, you were very involved with

1 the program, so probably 20, almost 20 years of active
2 participation in moving this program forward.

3 MR. GILL: At least. Seems like 40.

4 CHAIRPERSON CLEMENT: So, thank you so much for
5 everything that you've done, and personally all of the
6 support you provided in the last few years, and maybe Mr.
7 McNeely has a few other words to say.

8 MR. MC NEELY: Hal, we have a plaque for you.
9 Steve Owens and I signed it just to thank you for -- Hal's
10 been doing it for nine years, and that doesn't count all
11 the Soil Rule stuff and all the subcommittees, so really
12 this is all volunteer work, so Hall is a consultant so
13 that eats into his billable time as he's here, but he's
14 been more than willing and he's still here even though
15 he's off the Commission now, and willingly off the
16 Commission, I should add, but he's still here. He's still
17 going to participate, I suppose, and I think you will have
18 the history to help us out, and I want to give you this
19 plaque and thank you for -- really, it's pretty amazing
20 the amount of time you put in.

21 MR. GILL: Thank you very much.

22 MR. MC NEELY: Thank you, Hal.

23 (Applause.)

24 CHAIRPERSON CLEMENT: I don't know if you want to
25 say any words of wisdom to the Commission as you retire

1 into the horizon.

2 MR. GILL: Well, I guess, just get involved as
3 much as you can, because the purpose of the Commission is
4 to work with the DEQ and make the program better, and the
5 only way you can do that is to be involved as much as you
6 have time. And I understand that you all have, you know,
7 business lives and hopefully personal lives as well, which
8 this cuts into a lot. But just try to be as involved as
9 much as you can. And thank you very much.

10 CHAIRPERSON CLEMENT: Thank you very much. We
11 really appreciate your help.

12 The other former Commission Members, I do not see
13 anyone else in the audience, but we do want to mention in
14 particular --

15 MR. MC NEELY: Yeah. Theresa Foster has been --
16 I think she's been on since the original time, also, so
17 about nine years. She was representing cities, and Cathy
18 is replacing that chair.

19 Cynthia Campbell was the lawyer that now -- that
20 was vacant for a while, but she was on for about a year.
21 She's now working at DEQ.

22 And the last one, Myron Smith has been on --

23 MR. GILL: Since the beginning.

24 MR. MC NEELY: -- since the beginning, so
25 actually three of the original members finally, I guess,

1 had enough. And Bill Bunch is replacing Myron. But all
2 three really spent a lot of time. And I'm surprised
3 Theresa's not here because she comes all the time. She
4 was at these last public meetings the last couple of
5 weeks, but she will be here I'm sure eventually.

6 CHAIRPERSON CLEMENT: They really did so much for
7 us, and we appreciate all of their efforts and just an
8 amazing amount of time and commitment over the years to
9 this program and the State. Thank you those who are not
10 here also.

11 Okay. I think before we -- we just move on to
12 the regular agenda now, and we do have a brief
13 presentation right now by Mr. Mikitish regarding the roles
14 and responsibilities of Commission Members.

15 MR. MIKITISH: Just pass around some
16 presentations. If it's okay, Madam Chair, I will join you
17 here at the table.

18 CHAIRPERSON CLEMENT: Please do.

19 MR. MIKITISH: Rather than doing a power point in
20 this room, it will be easier to have some presentations in
21 front of us. Thank you for the time.

22 This is a short presentation on open meeting law,
23 and I know for members who've been on the Commission for
24 some time, this will be a refresher course, and for new
25 members, this will be something new, perhaps, but it is

1 important for everyone, I think, to just review the
2 requirements for open meeting law. They are important
3 requirements for all public bodies within the State.

4 Just as background, the Sunshine Laws, as they're
5 often known, were adopted many, many, decades ago in
6 states across the country. The federal versions of the
7 law in the Sunshine Statutes, before the statutes came
8 around, typically after the Watergate scandals, and just
9 kind of highlight the nature of what we try to do, which
10 is to operate within the public purview, to let the public
11 know what we do as a public body and to conduct our
12 business in the open and in the public.

13 The plan is the Freedom of Information Act at the
14 federal level and it combines at the state level public
15 records laws as well as the open meeting laws.

16 We certainly try to not only make our official
17 deliberations and proceedings occur in the public and
18 open, we try to maximize public access as well as general
19 overreaching goal, and any uncertainties or doubts that
20 arise as to whether something needs to be in the open,
21 courts have said it should be in the open, you should
22 resolve those doubts in favor of public access and
23 openness.

24 Is a public body. I believe it has been
25 determined that this is a public body. There are certain

1 criteria that you have to meet to get to participate in
2 this wonderful world of open meeting law, and I think this
3 body has been determined to be a public body subject to
4 the law.

5 Subcommittees of this Commission are also subject
6 to the open meeting law, so any subcommittees that we
7 have, meetings of the subcommittees must also follow the
8 rules. The only rules that advisory committees can get
9 out of or don't have to comply with are minutes, but it's
10 always a good idea to have minutes of those meetings as
11 well.

12 MS. HUDDLESTON: The law changed last year. We
13 have to keep minutes now.

14 CHAIRPERSON CLEMENT: Yes, we do now also have to
15 have subcommittees official meeting minutes, and the first
16 one that was subject to it was the last technical
17 subcommittee meeting, and we do have official meeting
18 minutes for that.

19 MR. MIKITISH: Very good. Sometimes it's a
20 difficult issue with an open meeting law is when does a
21 meeting occur. We all know when official meetings occur.
22 We have an agenda, we show up, everybody's here. But
23 other occurrences, other occasions can rise to the level
24 of a meeting.

25 If you have people on the phone, for example,

1 that can also be considered a meeting. If you have people
2 at a social gathering, for example, that can be considered
3 a meeting if there is a quorum there and a quorum is a
4 majority of the board.

5 A meeting consists of a quorum of the board
6 discussing, proposing or taking legal action on behalf of
7 the Commission, and it includes deliberations, so if folks
8 are discussing perhaps informally a proposal that is
9 before the board or may come before the board, that could
10 be considered a meeting.

11 Generally proposing legal actions is considered
12 to be putting forward for consideration discussion or
13 adoption. It's a pretty broad view of what could be
14 considered, something coming before the board. If there
15 are various aspects, things that might seem to be
16 tangential to an actual proposal before the board, that
17 could also be considered something that is subject to the
18 meeting.

19 I think the overarching idea is that if you are
20 considering something that might come before the board or
21 talking about issues related to that and you are doing
22 that with a quorum of the board, or something that might
23 become a quorum of the board, we will get into that a
24 little bit when we talk about e-mails, it's important to
25 think about whether that discussion should happen at a

1 formal meeting that's noticed and the public has access
2 to.

3 For example, I call Phil and say I'm acting in my
4 official capacity as an alternate member of the Commission
5 and say, you know, Phil, we really ought to consider X
6 before the board, and Phil calls Karen, Karen calls Bill,
7 and suddenly we've got something close to an quorum all
8 discussing what should come before the board.

9 That's getting close to something that's
10 happening that should happen in an open meeting,
11 particularly if it's not only what should be considered by
12 the board, but an action that should actually be taken to
13 the board.

14 We are all allowed to make recommendations as to
15 what should be put on a future agenda, and we can do that
16 informally by calling chair or staff members, however that
17 process normally works. That can all continue and it's
18 very proper to happen. There has to be a process for
19 folks to get their ideas about what should be considered
20 for appellate meetings, but once you start that log
21 rolling process of trying to gather support for an idea,
22 that could become a public meeting.

23 CHAIRPERSON CLEMENT: And just to clarify that
24 for the Policy Commission, what we've tried to do is have
25 the agenda items come to the Chair, rather than just use

1 administrative support, and the Chair and the Member have
2 the opportunity to discuss, but you don't want to -- at
3 least what we've been informed in the past, you don't want
4 to copy others on that correspondence if it's in writing
5 because we don't want to get into the potential that we
6 would be holding a quorum discussion. So, we've tried to
7 keep it between the Chair or the Chair and the
8 subcommittee, depending on what the meeting and the
9 meeting item was.

10 And we're not, at least to my knowledge, none of
11 the chairs have tried to restrict any agenda items. If
12 it's important to a Commission Member, we definitely want
13 to make it part of the meeting.

14 MR. MIKITISH: Public access to meetings. The
15 meetings before the board must be held within an
16 accessible place that the public can attend. Some
17 examples of things that have come up with other boards in
18 the past, you can't be in a restricted country club, can't
19 be in another state, can't be on a houseboat in the middle
20 of Lake Powell. It has to be at a reasonable time. Might
21 be fun, but we're not allowed to have fun. And there has
22 to be enough room to accommodate the members of the
23 public.

24 There has to be 24 hours in advance of the
25 meeting. It has to be made to -- I'm sorry. Notice of

1 the meetings have to be made 24 hours in advance of the
2 meeting to all members of the public -- excuse me -- to
3 all members of the public body and to the public.

4 Talked a little bit about social events. Be
5 careful if there is more than a quorum that may be present
6 at a social event. Oftentimes if you know that there is a
7 reception or a social event where it is likely that a
8 quorum of the Commission may attend, that there is a
9 courtesy agenda that gets posted in advance simply
10 identifying that there is an event that a quorum may
11 attend, that no business of the board will be considered
12 or discussed, no actions will be taken.

13 This particular presentation says that board
14 members should avoid talking with each other. It seems a
15 little extreme, but -- or have a witness. I think the
16 idea of just being careful and identifying that --
17 ensuring that conversation isn't about board members --
18 about board agenda items, as is always the case, will help
19 avoid any problems.

20 Posting of the meetings should occur at least
21 24 hours before the meeting. Recesses can occur. The
22 meeting can resume at a later date as long as it's
23 announced at the meeting.

24 CHAIRPERSON CLEMENT: We've had a case, for
25 example, where we've posted a meeting, had meeting members

1 or Commission Members show up but not have a full quorum
2 and therefore at the meeting we canceled the meeting
3 because we didn't have a full quorum.

4 MR. MIKITISH: Agenda items, I've seen your
5 agendas, they are detailed and that's how they should be.
6 They have to give specific identification of the items to
7 be considered. General categories, like old business, new
8 business isn't enough without some detail below that.

9 If something is not on the agenda for that
10 meeting, it cannot be discussed by the Commission itself.
11 All discussion must be reasonably related to an agenda
12 item that's adequately described on the agenda.

13 If you have something in the course of your
14 deliberations, as often happens, that a new topic will
15 come up, you have to save that for a future agenda,
16 identifying that. You can identify that during the course
17 of the meeting to the chair that you'd like an agenda item
18 included for an upcoming meeting, and that's how to hold
19 those, those new items that come up.

20 But the concept again is that the public has
21 notice of what's going to be discussed at that particular
22 meeting, so, if new agenda items were to come up that
23 weren't posted, it would be difficult, impossible for
24 folks who were interested in that particular topic but
25 perhaps not the other topics on the agenda to then have

1 input into the Commission and also to hear what happened
2 in regards to the deliberations on that.

3 MR. MC NEELY: Can I add something to this?

4 MR. MIKITISH: Sure.

5 MR. MC NEELY: In the past if some of the members
6 of the public would make comments at the end of the
7 meeting, we would have open conversations about their
8 questions or comments, but we've stopped doing that
9 because we feel that it doesn't comply with this.

10 MR. MIKITISH: Yes.

11 MR. MC NEELY: So we listen to the comments and
12 we don't really respond.

13 MR. MIKITISH: There was a -- I can't remember,
14 was it a court case or a new directive of the Governor's
15 Office, I think it was a court case that spoke
16 specifically to that issue. During calls to the public,
17 if a new topic is raised by a member of the public, you
18 can listen to that person's comments, ask questions about
19 it for clarification purposes only, and then you have to
20 put it on a future agenda if you want to discuss it more
21 fully. You can also assign it to a staff member or a
22 committee for future discussion, but it can't be addressed
23 at that particular meeting for the same reasons.

24 Minutes must be in writing or recorded or
25 videotaped. I know we have a transcript, a court reporter

1 is here. Do minutes typically get transcribed for the
2 board?

3 CHAIRPERSON CLEMENT: The minutes that are part
4 of the Policy Commission are transcribed by the Court
5 Reporter, and those are distributed to each Commission
6 Member.

7 We also used to have an abbreviated sort of
8 captured by ADEQ, which was informal meeting minutes,
9 which we don't have anymore. And we can discuss as a
10 Commission potentially if you want to pick that up again.

11 Where it's going to be more difficult is
12 subcommittees, because typically we don't have a full
13 quorum at the subcommittees and we may want to start
14 audiotaping the subcommittees rather than transcribing
15 them so we can again think about that, too.

16 MR. MIKITISH: Okay. Contents of the minutes.
17 Generally date, time and place of the meeting, the members
18 present, description of the matters considered or
19 discussed, a description of the legal actions taken,
20 persons who made the applicable motions, and the names of
21 persons making these statements.

22 There is some discussion about sanctions if
23 things go wrong. I won't get into lots of those.
24 Understand that violations of open meeting minute laws are
25 serious issues where part of the public trust that we hold

1 as commission members, they are part of Arizona law and
2 the Attorney General's Office specifically has enforcement
3 authority and takes these issues very seriously.

4 So, my favorite part, e-mails. E-mails similar
5 to the phone call situation I discussed earlier can create
6 some problems. If you are talking about or raising issues
7 related to the Commission in an e-mail, it can pretty
8 easily, because of technology, get transferred to a quorum
9 of the Commission itself. Whereas, by telephone, you had
10 to go person to person to person or one person making a
11 conference call.

12 E-mails with a click of the button could go to
13 lots of different folks, perhaps even if you didn't intend
14 that for the recipient of that e-mail, a different
15 understanding of the open meeting laws or they have missed
16 the meeting, one of the open meeting laws was discussed.
17 And I think that a concept that an e-mail communication,
18 like other forms of communication, can result in items
19 that are properly subject of the Commission being
20 discussed by quorum without public involvement, without
21 notice, without all of your requirements that are part of
22 the open meeting laws. It can happen pretty easily.

23 So, I think e-mail communications, just be aware
24 that that's an issue. Try to keep e-mail communications
25 going to the Chair would be my recommendation and only to

1 the Chair for items that might want to be addressed in the
2 future, and I'm not -- there is no strict prohibition. I
3 wouldn't propose a strict prohibition on individuals
4 within the Commission from e-mailing each other, just
5 recognize that it is a potential for open meeting law
6 issues.

7 CHAIRPERSON CLEMENT: And just to -- those
8 e-mails that originate from ADEQ or are copied to ADEQ,
9 all of our e-mails as Commission Members are public
10 record. Anything that is to, from or copied to ADEQ is
11 maintained as part of the administrative record by ADEQ.
12 Anything that is between myself and a Commission Member, I
13 maintain those and eventually I will hopefully put those
14 into a file for DEQ.

15 So, you individually, if you've done DEQ or
16 myself, you don't have to keep necessarily copies of your
17 own e-mails for the administrative record. We have found
18 in the past that this has probably the hardest area to be
19 sure that we are maintaining the requirements of the open
20 meeting law, and so typically what we've asked Members to
21 do is just correspond with myself, with the Commission
22 Chair so that we don't get bogged down and, you know,
23 potentially advocating a position.

24 There is a lot of work that the subcommittee
25 chairs and the chair has to do together and drafts go back

1 and forth and things like that, but we just keep the focus
2 of those e-mails to those people who absolutely have the
3 need and the right to know that information. And then
4 when I send out a broad e-mail, it is our public business
5 so everybody, you know, is copied on the Commission and
6 that's clear to everyone.

7 MR. MIKITISH: Executive sessions, does the
8 Commission have executive sessions at all?

9 CHAIRPERSON CLEMENT: I think we had one once,
10 but I don't recall the nature of that. I think it was
11 involving open meeting laws, executive advice, when we
12 would need executive advice, but I don't remember if we've
13 ever done that subsequently.

14 MR. MIKITISH: There are specific requirements
15 for what can be considered in executive session and
16 specific ways that executive sessions have to be handled.
17 They are in the materials. Because you don't use them
18 frequently, I won't go into each of them in detail. Just
19 recognize that if you want to go into executive session,
20 that has to be posted on the agenda in advance, and you
21 should probably have some discussions with legal counsel
22 before considering what -- how to do that, how to put that
23 on the agenda, and what specifically can be considered in
24 that executive session.

25 Calls to the public we discussed.

1 Public's rights, as I mentioned, the public must
2 be permitted to attend open meetings. They cannot be
3 required to sign in. You can have a sign-in if folks
4 would like to be included on future mailings, but there
5 can be no requirement that they do so.

6 It's up to the Commission to determine whether or
7 not there is a public call to the audience and the time
8 and restrictions on that. If persons make presentations,
9 they should identify themselves for purposes of the
10 minutes, and they cannot disrupt the proceedings in any
11 fashion. You can limit the time of speaking for each
12 public member as well.

13 Minutes should be made available to the public
14 within three working days. You can mark them draft if it
15 is not possible to get an approved version within three
16 days, which is very rarely the case, because for approved
17 versions, you have to vote on them at a public meeting, so
18 that can come later, but at least a draft must be made
19 available within three working days or you can make a tape
20 recording available.

21 CHAIRPERSON CLEMENT: Very good.

22 MR. MIKITISH: Any questions?

23 CHAIRPERSON CLEMENT: Mr. Bunch?

24 MR. BUNCH: Obviously since we all represent our
25 own entities outside of our Commission responsibilities,

1 there may be times where we may want to present our
2 company or whatever entity we're representing, our
3 positions to staff with respect to a matter that might be
4 heard before the board.

5 MR. MIKITISH: To your staff or to --

6 MR. BUNCH: To DEQ staff, i.e., rulemaking and
7 things of that nature, how does that fit into the open
8 meeting law requirements?

9 MR. MIKITISH: Conversations with staff,
10 direction to staff is perfectly valid so long as staff
11 isn't then communicating to the board.

12 MR. BUNCH: Okay.

13 MR. MIKITISH: You can't use a third person to do
14 what you couldn't do directly, so if the idea is to have
15 staff disseminate information or views to the board
16 outside of the public meeting, that's prohibited, but
17 simply discussions with the staff is absolutely fine.

18 MR. BUNCH: Okay. Thank you.

19 CHAIRPERSON CLEMENT: And just to clarify how
20 we've approached response from the public, we have it as a
21 later agenda item. We always have an open call to the
22 public, but when we have really important topics that
23 there is a lot of interest, we typically allow public
24 comments during the topic or right after we've had a
25 Commission discussion regarding that topic to keep it all

1 timely.

2 We have not yet put any time frame on public
3 comments because we have not had a need to do that, and so
4 generally, as long as they wish to speak, we allow them to
5 speak. People do not abuse that, at least since I've been
6 in this role, so that's generally how we call the open
7 public comments.

8 And then I think there was an issue, I think Mr.
9 Bunch was talking about conflict. Because we have an
10 unusual Commission that we actually are all appointed to
11 represent a particular point of view, and then we also
12 have responsibilities, many of us in our professional
13 lives in this program, I think that's more of how do you
14 reconcile that conflict if you get a couple -- or
15 potential conflict, I should say, a couple of ideas there?

16 MR. MIKITISH: Conflicts per se is a different
17 area than open meeting laws and there is training for all
18 public board members that are -- I'm not sure if they're
19 mandatory or if they -- they are mandatory. And we will
20 get into a lot more detail on conflicts of interest. But
21 in general, the Commission -- this Commission, as well as
22 many commissions, are made up of folks from specific
23 viewpoints, if not specific viewpoints, but from specific
24 industries or backgrounds or perspectives. There is a
25 recognition that the commissions are to be made up with

1 folks from diverse backgrounds and coming at the issues
2 from a particular -- I won't say point of view, but a
3 particular background or industry, and that's valid. It's
4 recognized that that's going to be a part of the makeup of
5 the Commission.

6 At the same time, when you come to the Commission
7 as a member, your overall goals must prevail, the idea
8 that we're all working on behalf of the betterment of the
9 state and trying to achieve particular goals as set out by
10 law and policies, why folks are actually on the
11 Commission.

12 CHAIRPERSON CLEMENT: And typically what we try
13 to do is look at topics in a broad way rather than a
14 particular case or -- even though in the subcommittee
15 meetings often a particular cite or a case may come up
16 because it's an example of a situation that from a broad
17 perspective we have to look at as a Commission, so it's a
18 little bit of a balance, and I'm sure we will get advice
19 from. We were very fortunate to have good legal counsel
20 participating on the Commission's office.

21 Thank you very much.

22 MR. MIKITISH: Absolutely. And if there are
23 additional questions that arise at any point, the Attorney
24 General's Office has a team of folks that handle open
25 meeting law issues.

1 I'm actually not on the team. I'm pinch-hitting
2 for some of the team members as noted on the front of the
3 presentation. Laurie Woodall is a representative within
4 our section. I think we have a couple of folks within our
5 section are a member of the open meeting law team, so
6 there's a body of folks for any questions that come up.

7 CHAIRPERSON CLEMENT: Mr. Johnson?

8 MR. JOHNSON: Yeah, Joe, maybe you can repeat
9 this. I don't think I quite caught it. Is a situation
10 where a quorum inadvertently happens at another public
11 event, such as, say, a public meeting on a rule, something
12 like that, because everybody here is kind of interested in
13 those things, how did you say to handle something like
14 that?

15 MR. MIKITISH: There can be no discussion when a
16 quorum is present of this Commission's business, and
17 Commission Members have to be somewhat circumspect in
18 trying to tailor their discussions amongst each other as
19 to this Commission's business.

20 Inadvertent quorums can happen clearly without
21 knowing when they would happen, because that's the nature
22 of things and life and community. We see each other at a
23 ball game, or whatever, you just have to be careful in
24 those circumstances not too talk about Commission
25 business.

1 MR. JOHNSON: Okay. Even in a case where, say,
2 we know there is going to be a public meeting on a rule
3 and there are going to be -- a lot of the members are
4 going to be there and they know that ahead of time.

5 MR. MIKITISH: If you know it ahead of time, the
6 Commission should post a courtesy agenda simply -- or a
7 courtesy notice simply saying that it's anticipated that a
8 quorum of the Commission will be at X public hearing
9 regarding X topic, no public business will occur at that
10 public meeting regarding Commission business.

11 MR. JOHNSON: Okay.

12 MR. MIKITISH: So that the public is aware and
13 there aren't any -- I think what we try to avoid is
14 surprises to the public and any sense that something is
15 happening that's improper. Try to act as transparently as
16 possible with what's happening. So if we can foresee that
17 a quorum might happen, I think it's best to publish or
18 post one of those courtesy notices.

19 MR. JOHNSON: Thank you.

20 CHAIRPERSON CLEMENT: Thank you. Was there any
21 other -- are there any other questions or comments,
22 discussion?

23 Well, thank you very much. Appreciate it, Joe.

24 MR. MIKITISH: Thank you for your time.

25 (At this time, Ms. Gaylord left the meeting.)

1 CHAIRPERSON CLEMENT: We are going to move then
2 into the Arizona Department of Environmental Quality
3 updates.

4 Thank you, Karen.

5 And it's Mr. McNeely, UST program.

6 MR. MC NEELY: UST program update. I was going
7 to quickly just give a quick verbal year-end presentation,
8 and also I was going to do it for all the new members, but
9 there is only two of you, but I will say a two-minute
10 brief about our division.

11 The tank program division was created three years
12 ago, August 2004. It's mainly to implement a new Senate
13 Bill that we will talk about later on, about sunseting
14 the SAF Fund.

15 The division has three sections. One is the
16 compliance section for UST operating, with inspectors, the
17 actual active gas stations. That's Ron Kern is the
18 section manager.

19 The next division is Joe Drosendahl's division,
20 the corrective action division -- or corrective action
21 section. He's not quite yet been promoted yet. He's
22 still a section.

23 So, Joe, what they do is do the cleanup of the
24 releases that have already occurred, and there is about
25 1400 currently. Ron has 2600 active facilities. So we

1 have -- our universe of size is 2600 active gas stations,
2 and Circle K has about 30 percent of those, 35 percent of
3 those, and then 1400 releases.

4 And the third section is the State Assurance Fund
5 Section, and that's the section that actually pays for
6 reimbursement of the cleanup activities that are going on
7 for the Corrective Action Section.

8 And just a quick update of numbers. Last year in
9 the SAF section, we reviewed over 100 claims a month, and
10 it came up to be over 1300 for the year, which is, I
11 think, our record year. We paid out over \$24 million this
12 year, which is the second most ever. The only year that
13 was ahead of that is when we unencumbered a lot of money
14 that was set aside and we paid out all those claims that
15 were waiting for payment. So this is really, I think in
16 terms of work being conducted, our record year, which is
17 impressive since we have a whole lot less releases than we
18 used to have, so a lot of work is being done.

19 And our SAF balance, we still have \$49 million in
20 the balance, so even though we paid record money out,
21 we're still receiving about 33 million a year in. So the
22 SAF -- even though the gas prices went up, I was expecting
23 to see a slowdown, but Arizonans still spend money on gas
24 because we still get our \$33 million in for the SAF.

25 In terms of the big program, what we've done in

1 terms of closures -- and we passed this out to the
2 Commission Members, a couple of graphs. I want to show
3 you the history of the program. I think we have some for
4 the public, but this graph says LUST releases reported and
5 closed from '96 to 2007. This one, I wanted to show you,
6 we've been closing -- since 1997, we've been closing more
7 sites than we've been opening.

8 So, the graph shows you in the mid -- in the late
9 '90s, '97, '98, '99, we were closing 900 -- 800 claims a
10 year -- not claims, releases. And we were opening quite a
11 bit, though, 540, 278, those are reported releases.

12 Since about 2002, it's really -- the amount of
13 releases have leveled off, and that's because the '98
14 upgrades -- there was a federal law that you had to
15 upgrade your tanks -- a lot of releases reported back in
16 '97, '98, '99.

17 Now, for the last two years we've only had 42
18 releases reported, so it's really leveled off to very low
19 level and we've been closing in the last three years about
20 900 releases.

21 So, if you look at the graph and you look at the
22 numbers, our program for open releases are getting smaller
23 and smaller and smaller. In '98 we had about 3,300 open
24 releases. Three years ago we had about 2,300 open
25 releases. Now we're down to 1300 and something.

1 So, really our program is about -- in terms of
2 amount of cleanups required, we're about a third of what
3 we had about a decade ago.

4 And we're still going strong, we're closing
5 sites. So, the big picture is we're trying to get these
6 sites all closed that are SAF eligible before 2010 or
7 close to closing, because in 2010 is when the SAF is
8 supposed to be sunset. So, that's what our goal's been
9 for the last three years. We've been pushing it and I
10 think we're making good progress.

11 I think that's all I have. Well, a couple of
12 other things. In terms of our big program updates, last
13 year we updated our SAF rules and we got those through and
14 they are effective June 2006. The last couple of months
15 ago, we had our Soil Rule updated with all the new
16 numbers, cleanup numbers per petroleum constituents, along
17 with other contaminants, and now we're trying to write
18 Monitored Natural Attenuation, No Further Action Rules,
19 which is our really last set of rule packages to get these
20 sites cleaned up.

21 Then for the compliance side, we're trying to
22 implement the Federal Energy Act which was passed two
23 years ago by Congress, so our big thing for the next year
24 will be trying to get the MNA Rules through and actually
25 effective, and try to get statutory authority to implement

1 the Energy Act. And then in the meantime continue on
2 closing sites for the next three years, so that's it for
3 the program update.

4 CHAIRPERSON CLEMENT: Okay. Let's then jump to
5 --

6 Any questions or comments before we move on?

7 Now let's jump to the UST Corrective Action
8 monthly update with Mr. Drosendahl.

9 MR. DROSENDAHL: Yes. I'm Joe Drosendahl, the
10 manager of the Corrective Action Section.

11 In your handout, you have your normal statistics
12 about the Corrective Action Program. As Phil says, we've
13 closed out a lot of open LUST cases. Over the course of
14 the program we've closed out 84 percent of the reported
15 releases.

16 Currently as of July 12th, we have 23 documents
17 in-house that we're currently reviewing, and this has been
18 pretty consistent over the last year. It may go up to 30,
19 whatever, but it's right around that same number.

20 And then we have the statistics for the Municipal
21 Tank Closure Program. As of July 10th, 31 cities or
22 counties have applied to the fund -- or to the program and
23 we've actually closed out 127 USTs.

24 We're still implementing the Route 66 Initiative,
25 and as Phil says, we're in the process of developing the

1 No Further Action and Monitored Natural Attenuation Rules.

2 CHAIRPERSON CLEMENT: Okay. Any questions or
3 comments of Mr. Drosendahl?

4 Thank you, Joe.

5 Let's move on, then. Risk assessment and Tier 2
6 modeling update.

7 MR. DROSENDAHL: And I have good news.

8 CHAIRPERSON CLEMENT: Okay.

9 MR. DROSENDAHL: We're currently putting the
10 revised Tier 2 software back up on the web site, so we
11 finally got that revised, so we're, you know -- you should
12 be seeing that up there, you know, the next week or so.

13 CHAIRPERSON CLEMENT: And all the bugs have been
14 worked out?

15 MR. DROSENDAHL: Yes. We're going to be putting
16 up on the web with it a description of what was fixed and
17 everything, and some other, you know, issues related to
18 using the software if the stakeholders choose to.

19 CHAIRPERSON CLEMENT: Did the Excel spreadsheet
20 issue ever get corrected that we had to use an old version
21 of Excel to input the data into the --

22 MR. DROSENDAHL: I'm pretty sure it was.

23 CHAIRPERSON CLEMENT: Is that corrected?

24 MR. MC NEELY: Yeah, and I will just give a quick
25 update on exactly what we changed.

1 We did make it where you can use updated
2 Microsoft, because in the past, apparently if you had a
3 different version of your Microsoft Excel, it wouldn't
4 work. So now it should work on all new updated systems.

5 We also updated the Tier 1 standards, which our
6 new Soil Rule went into effect about three months ago, so
7 now we have all the new toxicology. That was a big one.
8 So all the new tox data is in our new Tier 2 software.

9 Also, for vapor intrusion, which we have
10 attenuation factors now, I think if it's less than ten
11 feet, it's like ten. If it's greater than 15 feet, it's a
12 hundred times, if it's less than ten. So we tried to put
13 in basically what the national stakeholder groups were
14 doing, which is the attenuation for indoor air.

15 And the GPL model was not updated. We're going
16 to try to update the new GPL model, but that's a separate
17 model. We've been trying to do that. We've just not had
18 the staff or the ability, the consensus of how to update
19 that model yet. So once that gets updated, then we will
20 have to tie that back into the Tier 2 model.

21 So right now if you run it, it will be the old
22 GPL model, and you can always run it separate leaching
23 model if you want to, if you have issues with the
24 leaching. That's the reason why you can't close the site.

25 CHAIRPERSON CLEMENT: And everybody knows that a

1 GPL model is the groundwater protection limit, basically
2 that are modeled to avoid contaminating groundwater, and
3 DEQ originally put together a whole series of numbers and
4 a model, and apparently you're deciding how you're going
5 to move that into the future?

6 MR. MC NEELY: Right, that's correct. And we've
7 had stakeholder meetings on the GPL model a couple of
8 years ago, and it's a very technically intensive model,
9 and we just never really got it going where we could
10 finish it. We'd sort of get going on it and stop. So
11 we're going to have a push for that soon. I'd like to get
12 that on the agenda again for the stakeholders, but it
13 takes a lot of time.

14 CHAIRPERSON CLEMENT: Is it a UST program lead or
15 is it more of a WQARF?

16 MR. MC NEELY: WQARF programs and tanks together.

17 CHAIRPERSON CLEMENT: Okay.

18 MR. MC NEELY: And it's actually WQARF programs.
19 Personnel's the one that is doing most of the modeling and
20 that's the problem. We don't necessarily have the
21 technical expertise to do it, so we really need
22 stakeholder involvement.

23 CHAIRPERSON CLEMENT: Thank you.

24 MR. MC NEELY: Okay.

25 CHAIRPERSON CLEMENT: Any additional comments or

1 questions regarding the risk assessment Tier 2 modeling
2 software?

3 Okay. And then we have the State Assurance Fund
4 monthly update with Mr. McNeely.

5 MR. MC NEELY: Now you can pull out your bar
6 graphs if you have those, and we have them for May and
7 June that we could probably just skip over to the June one
8 because May is incorporated in June.

9 You can see the two different graphs. One is
10 applications received, the bar graph. In May we received
11 101 applications, then the dark graph, the bar graph is
12 how many we actually reviewed and got out the door. So in
13 May we received 101 and we reviewed 108. In June we
14 received 153 applications and we reviewed 112.

15 Typically we like to have more reviewed than
16 received, but we're usually pretty close, so, as of
17 June 30th, we had 268 active applications, and 262 of
18 those were less than 90 days in-house. And typically by
19 statute we really want to get them out by the 90-day mark.
20 So, we've been doing pretty good about keeping the flow.
21 Really, for the last year it's been pretty even in terms
22 of getting a little bit more out than then, but it's
23 close.

24 CHAIRPERSON CLEMENT: I had a question. With the
25 new State of Assurance Fund one application per month,

1 that comes into play in September?

2 MR. MC NEELY: September 19th.

3 CHAIRPERSON CLEMENT: September 19th. Do you
4 think your numbers are going to change then in terms of
5 the amount of applications you will receive?

6 MR. MC NEELY: Yes. We think it's going to be
7 about 60 to 70 a month applications, down from about 110 a
8 month.

9 CHAIRPERSON CLEMENT: So that will allow your
10 staff time to catch up and turn those applications around
11 to potentially shorter periods of time?

12 MR. MC NEELY: Absolutely. It's going to make
13 the review quicker, and it will also -- we will have less
14 appeals, because a lot of our interim determinations we
15 make, a percentage of those gets appealed, and if you have
16 less applications, we will have less appeals. So that
17 just takes a lot of time.

18 CHAIRPERSON CLEMENT: We hope.

19 MR. MC NEELY: Yes.

20 CHAIRPERSON CLEMENT: Thank you.

21 MR. MC NEELY: You are welcome.

22 Well, we can look at the appeal numbers for June.
23 If you turn to the back page, SAF appeals, you can see in
24 May and June we had informal appeals first column up, 29
25 appeals in May, 52 in June. And then we made informal

1 appeal determinations, 44 in May and 26 in June, so May
2 was good because we actually reviewed -- made 15 more
3 determinations was received, but June we received more
4 appeals than we actually had out the door.

5 Now, formal appeal requests, that's after those
6 go to the interim appeal and then the formal appeal, we
7 had 10 in May and 9 in June, but we actually made formal
8 appeal determinations 12 and 13, so we actually got
9 better. We actually did more determinations than are
10 received.

11 CHAIRPERSON CLEMENT: And you had one OAH hearing
12 in June?

13 MR. MC NEELY: Yes, we had one hearing.

14 CHAIRPERSON CLEMENT: Has that been decided yet?

15 MR. MC NEELY: Yes.

16 CHAIRPERSON CLEMENT: Could you briefly share
17 with us the decision, do you recall?

18 MR. MC NEELY: I'm not sure if we can share that
19 necessarily because the Director has 30 days to make a
20 final determination.

21 MS. HUDDLESTON: It has to be referred to the
22 Director. It hasn't been filed. It's still in process.

23 MR. MC NEELY: Yes.

24 CHAIRPERSON CLEMENT: Perhaps at the next
25 meeting. I think it's important if you get a final

1 determination on one of those appeals to share that with
2 us, because sometimes that has programwide implication and
3 if people are informed about that, then they have a heads
4 up.

5 MR. MC NEELY: I will do that.

6 CHAIRPERSON CLEMENT: Thank you.

7 MR. MC NEELY: That's all I have for the SAF
8 update.

9 CHAIRPERSON CLEMENT: Any other questions or
10 discussions regarding the State Assurance Fund for Mr.
11 McNeely?

12 Okay. You are on again. Let's jump now to the
13 next agenda item. There have been a number of recent
14 Arizona Senate -- state legislation and rules, and also
15 the Federal Energy Policy Act, so we're going to start
16 with Arizona Senate Bill 1306. Even though this was
17 August 2004, there's a number of changes to the program
18 that are being implemented currently.

19 Mr. McNeely.

20 MR. MC NEELY: Thank you. We have a fact sheet
21 out for the Senate Bill 1306. This is a fact sheet that
22 we did a few years ago. It's still relevant.

23 As I mentioned, Senate Bill 1306 did quite a few
24 things, but the main thing it did is put a -- scheduled a
25 sunset for the SAF Fund. So if you go through the fact

1 sheet -- actually I won't go through and just read
2 everything. You can just do that. You can read it
3 yourself, but at the same time what's happening in the
4 future, the future requirements are what's happening, is
5 actually June 30th, last year 2006 was the last day that
6 you could report a release that's eligible for SAF. So
7 that requirement has significance. All new releases
8 reported today are no longer SAF eligible. The
9 owner/operators are required to pay for those corrective
10 actions using their FR mechanisms, which typically it's
11 insurance policies, but big companies are self-insured
12 also. And cities and towns could be -- actually have
13 other type of FR.

14 So that's a big deal for us. That's one thing
15 Ron Kern's group, the inspectors, are really looking at FR
16 documentation. For sunset of the SAF Fund to be
17 successful in terms of having funding to clean up future
18 releases, you really need to make sure that
19 owner/operators have FR to do that.

20 So, we've been doing a lot more inspections,
21 spending a lot more time trying to make sure that every
22 owner/operator out there has some type of mechanism to
23 clean up contamination once it's released.

24 Future dates that are coming down the road,
25 June 30th, 2009, that's the last day that DEQ can accept a

1 pre-approval work plan, so we have a year and 11 months to
2 go for accepting pre-approval work plans. What's
3 significant about that is if you are an owner/operator and
4 you are doing cleanup, it's not too significant. But if
5 you are a volunteer, volunteers are property owners that
6 are not liable for the contamination. They have to have
7 all their work pre-approved, so all volunteers out there
8 are doing work will have to have a pre-approval
9 application to carry them through to June 30th, 2010,
10 which is the last day you can submit a SAF application for
11 reimbursement on direct pay. So those are two big dates
12 that are coming up.

13 This bill did other stuff, but you can read
14 through it. So we've been implementing this and that's
15 what we've been focusing on for the last three years.

16 CHAIRPERSON CLEMENT: Are there any questions or
17 discussion on Senate Bill 1306 before we move on?

18 MR. MC NEELY: Senate Bill 1310, that was this
19 year. It goes into effect September 19th, 2007, and this
20 was -- two things, one, there was a technical correction
21 and the other part was just limiting the amount of appeals
22 coming -- or applications coming to the department.

23 If you pull out the sheet that says 1310
24 Provisions, it's two items. Title 49-1019(E) would allow
25 -- Senate Bill 1306 made volunteers pay 10 percent,

1 owner/operators have to pay 20 percent co-payment for SAF
2 claims. There is one, 1019(E) allows owner/operators to
3 only pay -- to get 100 percent reimbursement if they
4 weren't liable for multiple releases on their property.
5 So if you had previous owners or previous operators that
6 were liable for the same contamination, or the same
7 property, we would divvy up, saying you are 50 percent
8 liable for this and you would get reimbursed 100 percent
9 of that 50 percent.

10 Well, Senate Bill 1310 just struck that and said
11 everyone pays 10 percent regardless of liability. That
12 will be easier for tracking purposes internally.

13 1052(Q) is the amount of claims that DEQ can
14 accept per month. Right now it's really -- it was limited
15 by -- claims had to be greater than \$5,000 to submit them,
16 but now it just says now you can submit one claim per
17 calendar month and that goes in effect September 19th.

18 CHAIRPERSON CLEMENT: Per site?

19 MR. MC NEELY: Per facility.

20 CHAIRPERSON CLEMENT: Per facility. Not per
21 release but per facility?

22 MR. MC NEELY: Yes.

23 CHAIRPERSON CLEMENT: Thank you.

24 MR. MC NEELY: Now, if you want to go through the
25 next fact sheet, the Federal Energy Act -- I've skipped

1 through -- actually I will go back to C. The No Further
2 Action/ Monitored Natural Attenuation Rule, we didn't give
3 a fact sheet out, but that's the rule that was authorized
4 in Senate Bill 1306, and the purpose of this was, when --
5 the SAF will sunset on June 30th, 2010, there may be a lot
6 of sites out there that have groundwater residual
7 contamination that needs further monitoring before you can
8 close it.

9 Well, one thing that the legislature did not want
10 to do is create a bunch of sites out there where there is
11 no SAF available to clean them up and there is no
12 insurance for these owner/operators to tap into to clean
13 these sites up. So they created this program called the
14 Monitored Natural Attenuation program, and no hazardous
15 substance fund. So if you go through this program and you
16 follow the rules and you actually get your source cleaned
17 out and you meet all the requirements, DEQ will take on
18 the monitoring requirement after June 30th, 2010. And
19 then DEQ will do the monitoring, do the well abandonment
20 and close the site at no cost to the owner, operator or
21 volunteer. This is a way, sort of a compromise how to
22 sunset SAF funds, because there is some commitments that
23 are made that the SAF will be there to clean these sites
24 up. There is no insurance and owner/operators really do
25 not have the money necessarily to pay it out of their own

1 pocket to clean this up. So this is a transition type of
2 a program.

3 Those rules, we presented them to the Policy
4 Commission in May. The Policy Commission approved the
5 concept and wrote a letter to DEQ requesting a couple of
6 changes. DEQ made those changes and we actually sent this
7 to the Secretary of State last Friday, and they should be
8 published -- I don't have the exact date, but it's the
9 third week of August, I think August 27th --

10 MR. DROSENDAHL: I think so.

11 MR. MC NEELY: -- they should be published in the
12 Secretary of State. We scheduled a couple of public
13 hearings, one in Phoenix --

14 MR. DROSENDAHL: The 17th of September in Phoenix
15 and the 20th in Tucson.

16 MR. MC NEELY: And they're both from two to four,
17 the time. And so if the public hearings go okay and if
18 public comment period ends September 27th, if we don't
19 have a whole lot of negative comments, we could get those
20 rules in for final rulemaking very shortly, like October,
21 November time frame, and we could have a final ruling
22 early February.

23 CHAIRPERSON CLEMENT: We did, as Mr. McNeely
24 mentioned, we did as a Commission draft a couple of
25 comments that were fairly innocuous comments, and

1 apparently have been accepted by the Director.

2 Just to remind everybody, if you haven't had a
3 chance to look at our statutory obligations, we can
4 recommend, we can't dictate. The final decisions are the
5 Department's or the Governor's Office. But we do take our
6 recommendation responsibilities very seriously, and if
7 there is an interest by the Commission, we recommend
8 addressing them. Thank you.

9 MR. MC NEELY: Okay. So I will move on to the
10 Energy Policy Act if there is no question.

11 CHAIRPERSON CLEMENT: Could you skip to the OAH
12 and then back to the Energy Policy?

13 MR. MC NEELY: The Administrative Appeals Rule,
14 those are rules being in formal comment period right now.
15 There is a public meeting on July 31st. It's in Room 250
16 at 1 o'clock here at DEQ, and those rules govern how DEQ
17 will address formal appeals. It's a rulemaking from our
18 administrative office or office of administrative counsel.
19 They get all the formal appeal requests and it gives the
20 procedures and process how they're going to handle those.

21 CHAIRPERSON CLEMENT: This issue came up as a
22 public comment in our last Commission meeting, and as a
23 consequence of that, we added it to this agenda item, and
24 also we distributed a copy of two things to the full
25 Commission, one, the draft rules and, two, the comments by

1 the Arizona Chamber of Commerce relative to those rules,
2 because those were materials that had been submitted by
3 one of the members of the public to the Commission and I
4 wanted it to get out to the full Commission.

5 They are actually very substantive changes. I
6 had absolutely no response from Commission Members in
7 terms of wanting to pursue formal comments, any kind of
8 hearings, et cetera, but I do strongly recommend those
9 that are not familiar with that rule package to take a
10 moment, and if you need me to send that out again, I can
11 do that, and just see if there is of any interest in terms
12 of the Commission and any formal action we want to take.

13 I've got no feedback relative to that, so I did
14 not put it on the agenda as an item to take action on
15 because we have had no input to that, but it is an
16 important rule package. And it's not clear to me how
17 those hearings -- that rule package affects the OAH
18 hearings that technical appeals panels participate in.

19 MR. MC NEELY: This rule packet, it's only a
20 couple of pages long, so you probably really should read
21 it. It really changes a couple of sentences that have
22 been changed. What this does is all formal appeals come
23 to DEQ. DEQ forwards them over to the Office of
24 Administrative Hearings. This shows how we do that.

25 CHAIRPERSON CLEMENT: Okay.

1 MR. MC NEELY: So it affects every formal appeal,
2 not just UST, but for the agency that happens. So any
3 comment that was made in writing to DEQ, that person has
4 been notified that we have a public hearing, and also it
5 was extended due to comments from the public because I
6 think the public comment period was ended a month ago, but
7 we extended it and had a public hearing because of
8 interest. There is opportunity to comment.

9 CHAIRPERSON CLEMENT: There is definitely a lot
10 of language that you might want to look at in that little
11 package.

12 MS. MARTINCIC: Phil, can you see what time that
13 meeting's at, the one on July 31st again?

14 MR. MC NEELY: 1 o'clock in Room 250.

15 CHAIRPERSON CLEMENT: I believe that's right here
16 then.

17 MR. MC NEELY: That's next Tuesday.

18 CHAIRPERSON CLEMENT: So, if you have any
19 interest in the Commission participating in a more formal
20 manner, please let the Chair know and we will see if we
21 can facilitate that.

22 MS. MARTINCIC: Can I ask that the Department
23 consider reviewing brief fact sheets for the rulemaking
24 process, the three rules that are out there right now for
25 the Commission Members?

1 MR. MC NEELY: What three rules? You mean the
2 MNA Rules and Administrative Hearing rules? Is there a
3 third one?

4 MS. MARTINCIC: Is the NFA rules part of the MNA?

5 MR. MC NEELY: Yes.

6 MS. MARTINCIC: I just think that would be
7 beneficial to have the Department view the two rules in a
8 fact sheet format just like you done for the legislation.

9 MR. MC NEELY: We can certainly do the MNA, No
10 Further Action Rule. The other rule packet I will have to
11 -- that's not a tank program rule, that's ADEQ, so I will
12 have to talk to whoever is in charge of that rule.

13 CHAIRPERSON CLEMENT: Thank you.

14 MR. MC NEELY: Okay. Well, now, the third -- I
15 guess the 4th item, the energy act, the Federal Energy
16 Policy Act, this was part of the energy bill that was
17 passed by Congress and signed by President Bush in
18 August 2005. What they did is they put new requirements
19 for the UST program, mainly for compliance, and they're
20 trying to have all the states implement the federal law as
21 soon as possible, and they have deadlines in here and how
22 the federal government is doing this is they're saying, if
23 you don't implement the law, we won't give you any federal
24 grant money. So we get about a million dollars on the
25 corrective action side and about 300,000 a year on the UST

1 compliance side every year, so the carrot is to implement
2 this law or you will lose federal funds.

3 The main things we're working on -- I will go
4 through it very quickly. There is a groundwater
5 protection component. What they want to do is all new
6 tanks within a thousand feet of a water system has to have
7 secondary containment.

8 Currently we have no statutory authority to do
9 that even though we've been going through our records over
10 the last year, and every system that's been installed in
11 the last year does have secondary containment. So I think
12 for us to pass -- to get that through statute, it won't
13 cost really the public or the owner/operators any
14 significant amount of money because they're already
15 implementing this. I think that California has been doing
16 this for a long, long time, and a lot of these contractors
17 came from California. So, this is already happening, we
18 just need to have statutory authority to do that.

19 Delivery prohibition. Now, this is something
20 really new. California has it and some other states have
21 this. This says if your USTs are out of compliance, DEQ
22 needs to have authority to actually red-tag the tanks,
23 saying you are out of compliance, you are not allowed to
24 receive fuel.

25 So, what's significant about that is we're

1 regulating the people that deliver the fuel. We don't
2 really regulate them now in terms of the UST program. I
3 think Weights and Measures has that authority for Maricopa
4 County for the Stage 2. If you're not in compliance with
5 that, they can actually tag a tank and say you can't take
6 it. But it's not unprecedented in Arizona, but now for
7 our program it is, so it will take some new statutory
8 authority to have that red-tag authority.

9 Then the third thing is operator training. We
10 need to train every operator, and they have three classes
11 of operators. The person that is onsite that has to
12 respond to emergencies, that's probably the person behind
13 the desk at every gas station, and there is other two
14 operators, the main operator that's actually in charge of
15 all operations and the person in charge of daily
16 operations. We have to have a training program in place
17 by 2009 and then implement it by 2012.

18 When you think about 2600 facilities and numerous
19 operators at every facility, it's probably 20,000 people
20 that need to be trained, probably on an annual basis, so
21 that's a big program. We do not have any authority to do
22 that so we need to get statutory authority to do that, to
23 create some type of training program.

24 There is also a frequency requirement for
25 inspections. We're supposed to inspect all tanks every

1 three years. In the past we've been inspecting tanks
2 about four to four and a half years. Currently we've
3 hired more inspectors and now we are inspecting -- at the
4 current rate we'll make the three-year mark if we keep
5 five inspectors. In the past we've had three inspectors.

6 So, we have 2,600 facilities. We're on pace. We
7 need to do about a thousand a year. In the past we've
8 done about 700 a year.

9 So, those are the main things. We had a public
10 stakeholder meeting a couple of weeks ago. It was a
11 pretty good turnout. And we're working on draft
12 legislation to send out to the stakeholders to see what
13 they think of it. We have no authority from the
14 Governor's Office to actually pursue this, but we're just
15 going to try to see if we can get stakeholder support or
16 if the stakeholders want to do this, then we will ask the
17 Governor's Office if we can pursue this.

18 CHAIRPERSON CLEMENT: Just to -- the three areas
19 of statutory changes you need are regarding the secondary
20 containment requirement, the delivery prohibition, and
21 then the UST operator training?

22 MR. MC NEELY: Right.

23 CHAIRPERSON CLEMENT: Okay.

24 MR. BUNCH: Phil, I've got a question. You had
25 mentioned that the carrot at this point is funding from

1 EPA or the Federal government, but isn't there also an
2 underlying legal obligation or program obligation beyond
3 that to comply with the terms of the Energy Act?

4 MR. MC NEELY: Right. It is federal law, so --
5 and typically -- sorry. I don't know how to turn it off.

6 All right. It is federal law. We would like to
7 implement the federal law. It's just typically what
8 happens is the feds, they pass a federal law and they will
9 do rules. This thing got past and the time frames are so
10 tight that the Federal government are not doing rules, EPA
11 is not doing rules. So we're going straight from federal
12 law to implement this as a state level. Our law in
13 Arizona usually says we will not be more stricter than the
14 CFRs of federal rules. If we say that, I mean, we have to
15 change our statute to actually say the federal statute,
16 too, now, because there is no federal rule to implement.
17 So, the EPA, they're trying to implement what Congress
18 past, and they don't have time to do the rules on that,
19 and I'm not sure if they will ever do rules.

20 So, if we don't do it and we don't follow this,
21 there is a question, could EPA come in and actually do
22 this type of inspection. They don't have any rules to do
23 this either. Could they red tag. There is a lot of legal
24 questions about that.

25 So, in general, we looked at this program and

1 most of the requirements are good requirements and they're
2 preventing releases, they're preventing people -- so in
3 general we don't have a major issue with it. The only
4 major issue is resource issue, how do we do this, how do
5 we fund it.

6 And the carrot said -- it's really not a carrot
7 of the funding, it's more like a stick because we're
8 already getting the funding. They are saying, we will
9 take the funding away if we don't do it. There is no new
10 resources. The current resources, we don't implement. We
11 just need requirements.

12 MS. MARTINCIC: Congress essentially mandated all
13 these different requirements without providing state
14 additional funding to implement it?

15 MR. MC NEELY: That's correct.

16 MS. MARTINCIC: Do you need statutory authority,
17 Phil, to do the public records?

18 MR. MC NEELY: No. We have -- no, we don't have
19 --

20 MS. MARTINCIC: Or do you already have that in
21 place?

22 MR. MC NEELY: Right. We have the records in
23 place, and so there is no statutory authority requirement
24 to share public records because they're already public
25 records.

1 MS. MARTINCIC: You're already tracking all that
2 information right now?

3 MR. MC NEELY: Right. The inspections, the
4 three-year time line, that's really a policy we're trying
5 to make three years. If we have the resources, we will do
6 it, but there is no real mandate in our statute that we
7 have to do it. We wouldn't want that.

8 CHAIRPERSON CLEMENT: Any other questions or
9 comments on the Federal Act? And this is going to be a
10 topic, I know, of discussion, I think, for the Financial
11 Subcommittee.

12 Any other things that we need to get you to
13 update us on the legislation and rules affecting the
14 program?

15 MR. MC NEELY: I think that's all. Once we get
16 the Energy Policy Act, if we pursue that and get statutory
17 authority, then it could be a rulemaking process. That's
18 really over the next couple of years, that's what we will
19 be working on that program.

20 CHAIRPERSON CLEMENT: Let's jump down. We have
21 -- Andrea Martincic is our Financial Subcommittee Chair,
22 and she is on travel, and she's on the telephone right
23 now, and one of the things that we wanted to talk about
24 was the Financial Subcommittee's roles and future issues.

25 Andrea, I'm going to turn it over to you.

1 MS. MARTINCIC: One thing that I kind of wanted
2 to ask the Commission Members to think about is whether
3 not it would be timely to consider either renaming the
4 Financial Subcommittee or if a new subcommittee needs to
5 be formed. It's my understanding that, you know, the
6 Financial Subcommittee historically has dealt with SAF
7 issues, insurance concerns and things of that nature, and
8 I know that some of those issues still will remain, but
9 given the phaseout of the program and the number of open
10 sites, or whatever, I don't know that there's as much of a
11 need as there had been in the past for those types of
12 issues to be reviewed.

13 So, I just kind of wanted to put that out there
14 for Commission Members to consider, and I don't know if we
15 want to come back to the next Commission meeting and make
16 a decision on that, or I know we have not met recently in
17 the last few months because we've been waiting on -- I've
18 been waiting on the Department's position on what they
19 were going to pursue in terms of the Energy Policy Act,
20 but I'm not even sure really if all of those issues fall
21 under the title of Financial Subcommittee, and it's my
22 understanding that the Technical Subcommittee has been
23 dealing with the MNA rules so far. So, I guess I will
24 open it up. Do Commission Members have any thoughts on
25 that or --

1 CHAIRPERSON CLEMENT: I think the idea was to
2 make it maybe a broader subcommittee.

3 MR. BUNCH: That makes sense.

4 CHAIRPERSON CLEMENT: And I don't know if the
5 title would be administrative. I don't know what you
6 would call it necessarily, but we need a subcommittee that
7 deals with technical issues and we need a subcommittee
8 that deals with other things --

9 MR. BUNCH: Right.

10 CHAIRPERSON CLEMENT: -- and not just finance.
11 And particularly as the Federal Policy Act becomes an
12 implementation, if there are going to be statutory
13 changes, whether we support those or not support those,
14 that's often a critical point for the Commission.

15 MS. MARTINCIC: It could be termed rules and
16 legislation affecting the UST program, and like that,
17 maybe, or -- I don't know.

18 MR. BUNCH: I think it's a good idea.

19 CHAIRPERSON CLEMENT: So maybe we will put this
20 on the agenda for the next Commission meeting. If anybody
21 has any additional thoughts regarding it, if you want to
22 send those to me or name or title for a new subcommittee
23 or a title change to the Financial Subcommittee, I
24 personally don't care what we call it as long as we open
25 the mandate up of the subcommittee to include other things

1 besides just finances.

2 MS. MARTINCIC: Also, I know I'm not there, it's
3 difficult for me to gauge, but we were scheduled to have a
4 Financial Subcommittee meeting on August 2nd. I know I
5 can't hold a meeting on August 2nd, but given the Energy
6 Policy Act and all of those issues, I would be more than
7 willing to schedule a meeting, you know, more a couple of
8 weeks after, some time in mid August if there is interest.
9 So I guess I need to find out if that's one thing that the
10 Commission would like me to set up with DEQ.

11 MR. MC NEELY: We were going to try to have
12 another stakeholder's meeting in mid August once we passed
13 out some language, the draft language.

14 MS. MARTINCIC: Okay.

15 CHAIRPERSON CLEMENT: Would it be more
16 advantageous, Andrea, to have that meeting after DEQ
17 passes out their language?

18 MS. MARTINCIC: It could be. I mean, I think I
19 have an idea what the department's probably going to
20 pursue. I mean, we won't have the specific language. I
21 will just leave that up to the other Commission Members.
22 We could hold it in late August if that seems more
23 appropriate.

24 CHAIRPERSON CLEMENT: Is there an opinion here or
25 --

1 MR. BUNCH: I guess I would ask Phil if he would
2 see a benefit for a subcommittee recommendation prior to
3 public stakeholder meeting, maybe offer something more
4 complete or something that's been looked at before you get
5 the public back in. You know, that would be my
6 recommendation.

7 MR. MC NEELY: The way I actually thought we were
8 proceeding on this was we were going to have our DEQ
9 public stakeholder meeting, come up with a proposal from
10 that, and then present it to the Policy Commission to see
11 if they have -- usually the Policy Commission is on the
12 back end -- not back end, but when we actually have a
13 proposal, right now we don't necessarily have a proposal,
14 so, I don't know, you can do it different ways. We are
15 going to have to have public meetings. That's just part
16 of what we're going to have to do in terms of trying to
17 develop statutory rule.

18 MS. MARTINCIC: I'm sorry, what time is that
19 meeting scheduled for in mid August, the next stakeholder
20 meeting?

21 MR. MC NEELY: No, I don't think it has been, but
22 I think we want to do it in the afternoon sometime,
23 probably, like the third week, 17th, something like that.

24 MR. KERN: 17th.

25 MR. MC NEELY: What we're trying to do is just

1 give the stakeholders a couple -- enough time to actually
2 review the language. Right now we're trying to figure out
3 what language we are actually required. We try to do
4 minimal statutory changes to implement the Energy Act to
5 get that out. That may take a week or two to get that out
6 to the public.

7 CHAIRPERSON CLEMENT: You would have that
8 language for the mid August public meeting?

9 MR. MC NEELY: Oh, yes. We want to give them at
10 least a week to review it. We had about 25 people show up
11 at the last stakeholder meeting.

12 CHAIRPERSON CLEMENT: Cathy, did you have any
13 opinions on this?

14 MS. CHABERSKI: I was at the last stakeholder
15 meeting and you were going to send something out to see
16 what response you have and set the meeting accordingly,
17 and I think people were getting confused because you said
18 you needed to get the authority of the Governor first to
19 move forward with that and we are kind of moving forward
20 without that. So I guess my question is, once you send it
21 to the Governor, how long does that take to get approval
22 to move forward?

23 MR. MC NEELY: There is two processes. One is to
24 figure out exactly what the stakeholders would want to do
25 for one. Secondly, what we have to do to implement the

1 act, so we're actually trying to write the statute
2 assuming we're going to implement the act. I would like
3 to see stakeholders agree or not agree, then the Governor
4 is almost a separate problem. We have to ask the
5 Governor. Every year you have to ask the Governor's
6 Office can we pursue legislature for this. So that is the
7 process that will happen in the September, October time
8 frame.

9 It would be a lot easier if the stakeholders said
10 we want to implement this. If everyone's opposed to it,
11 then the Governor's office has to evaluate it, is it worth
12 it to pursue something that is going to be opposed.

13 MS. CHABERSKI: But from everything you've told
14 us, you should move forward with it under the
15 consideration, it seems like the stakeholders are
16 supportive of it.

17 MR. MC NEELY: It seems to me it is federal law.
18 We don't really have major issues with the actual
19 provisions. It's a resource issue, and I think the
20 stakeholders, we've had really no negative comments on,
21 don't do it. It's just how we are going to do it.

22 MR. BUNCH: I am not sure I am clear on how we
23 could not move forward, seeing that we are all obligated
24 to comply with federal law, and operators at some point,
25 if we don't get the operator training piece, they will be

1 out of compliance with federal law, compliant with state
2 law and there will be a risk.

3 MR. MC NEELY: I assume we're going to move
4 forward.

5 CHAIRPERSON CLEMENT: Andrea, did you hear all
6 that?

7 MS. MARTINCIC: Yeah, I did. I think that there
8 are some issues that are going to be potentially
9 pretentious related to the Energy Policy Act and some of
10 those implementation issues. So, I mean, I'm fine with
11 scheduling something the last week in August and hopefully
12 stakeholders will have the language from DEQ at that point
13 on what they would want to pursue related to the Energy
14 Policy Act. Is that fair, Phil?

15 MR. MC NEELY: Sure.

16 MS. MARTINCIC: To say that we would schedule
17 something in late August?

18 CHAIRPERSON CLEMENT: We have a lot of nods
19 around the Commission Members it looks like, so I think
20 that's a good compromise, Andrea.

21 MS. MARTINCIC: Okay. I will contact Phil and
22 Cynthia and work on scheduling a Financial Subcommittee
23 meeting the last week of August, and we will get notice
24 out to the Commission Members.

25 CHAIRPERSON CLEMENT: Okay. Great. Yes.

1 MS. MARTINCIC: That's all I have.

2 CHAIRPERSON CLEMENT: One other question from
3 Cathy.

4 MS. CHABERSKI: To follow up on the Commission or
5 any of the subcommittee titles, as a point of interest can
6 you describe your previous Technical Committee? Do they
7 just look at hard-core technical issues, or rulings, could
8 you give a few examples so we would know what to kind of
9 suggest for the other miscellaneous committees?

10 CHAIRPERSON CLEMENT: The technical committee in
11 the past -- and, Mr. Gill, you can just jump right in here
12 because he was Chair person for many a year -- has dealt
13 with a plethora of issues that were technical in nature.
14 They could be things that were agency policy, unwritten,
15 written. They could be potential rules. They could be
16 how you approach a site investigation. They could be the
17 Tier 2 software that everybody has been unhappy about for
18 many a month. They could be a bunch of things, but they
19 all did have to do with real technical issues, and, you
20 know, how they worked through the program varied.

21 MR. BUNCH: Technical with respect to corrective
22 actions?

23 CHAIRPERSON CLEMENT: And corrective actions,
24 yes, but investigation, corrective action, risk
25 assessment, those really fundamental technical issues in

1 the program.

2 Mr. Gill, did you have anything you wanted to add
3 to that?

4 MR. GILL: I guess the only thing is, we looked
5 at everything with a technical bend to it. That was the
6 purpose of the subcommittee, but we actually reviewed all
7 rules and statute and policy that affected the program.
8 And what I found through all the entire time that I worked
9 with -- been working with DEQ is that I've always tried to
10 identify where we had technical issues that were -- and
11 look at the law and the policy and how that was going to
12 create a problem. Sometimes you couldn't do that. When
13 you look at a statute, a lot of times they don't know what
14 they're writing as far as how it's going to affect us.
15 And that's kind of -- it's kind of the way I looked at it
16 is in the rule and policy, and the statute, how is that
17 actually going to work in the field. So that's kind of
18 where technical came into it.

19 But it sounds like what Andrea is talking about
20 is kind of taking on sort of that role, too, as far as
21 looking at this instance, the federal law and whatever
22 DEQ's starting to look at in writing, because it isn't
23 always a technical issue. I mean, it may have a technical
24 ramification when you get out in the field, but that's
25 kind of the way we look at it.

1 CHAIRPERSON CLEMENT: Was that helpful?

2 Anything else, Cathy, or anybody else?

3 Okay. We're going to -- as far as action items,
4 we're going to add to the next agenda a discussion of
5 potentially changing the name and the purview of the
6 current Financial Subcommittee.

7 Andrea Martincic, the current Financial
8 Subcommittee Chair, is going to schedule a meeting towards
9 the end of August regarding the implementation of the
10 Federal Policy Act and the proposed statutory changes that
11 will be necessary by ADEQ, post the ADEQ public meeting.
12 I think those are the two agenda items that we have out of
13 that.

14 Anything else, Ms. Martincic?

15 MS. MARTINCIC: No. That's it.

16 CHAIRPERSON CLEMENT: Okay. Good. Good.
17 Thanks.

18 Any other topics, discussions under that agenda
19 item that we need for the Financial Subcommittee?

20 Technical Subcommittee, really we have not had a
21 Technical Subcommittee meeting since May. Prior to the
22 last Policy Commission meeting, we met and had a very
23 productive Technical Subcommittee meeting, and we haven't
24 had one since then. We do not have any major technical
25 issues if front of us except for the redraft of the MNA

1 and NFA rule.

2 Anything else, Mr. Gill? I know we're in a
3 transition mode right here.

4 MR. GILL: No, I don't think so. I was just
5 looking at the -- of course, I was unable to make the
6 meeting on the Energy Act, but I was just looking at this
7 to see if there is anything. And the thing is, this is
8 always a technical and a financial benefit, everything we
9 discuss. So it doesn't necessarily have to be divided
10 absolutely into technical and financial subcommittee, and
11 it sounds like what Andrea's trying to do by renaming it,
12 is ultimately we're going to discuss it, one or the other,
13 at subcommittees, so it will be discussed, but I don't
14 really see any real technical issues right now on the new
15 things that are coming up either.

16 CHAIRPERSON CLEMENT: Well, that gives us an
17 opportunity, I think, then, for all of us to look into our
18 hearts and consider how much additional commitment one
19 wants to make by chairing one of these subcommittees, and
20 the Technical Subcommittee has been very active. It is a
21 major committee. It is a responsibility. You've got some
22 big shoes to fill. Mr. Gill did a superb job. There is a
23 the lot of communication that has to occur with that chair
24 and the technical community. I don't know how many people
25 are on Mr. Gill's distribution list, but an enormous

1 number of consultants and other interested parties, and
2 I'm sure he would be willing to share that list with
3 others in the program. But I would ask that for the next
4 Policy Commission meeting that we have examined our hearts
5 and our time commitments, and if anyone would be willing
6 to chair that Technical Subcommittee, even though we don't
7 have anything in the immediate horizon, it is going to be
8 an extremely important position and we do a lot of good
9 work in that subcommittee.

10 So, I don't have anything else on that.

11 MR. BUNCH: Is it not part of the protocol to
12 assign that to somebody who failed to show up?

13 CHAIRPERSON CLEMENT: We've never done that in
14 the past.

15 MR. BUNCH: That's the way it works in the
16 private sector sometimes.

17 CHAIRPERSON CLEMENT: Because it's such a major
18 commitment, I mean, you really do have some time to put
19 into it, I wouldn't feel comfortable, especially for a new
20 member that hasn't participated at all to give them an
21 assignment of that nature, but we certainly can talk about
22 nominations and voting them in.

23 MR. BUNCH: For the record, that was an attempt
24 at humor.

25 CHAIRPERSON CLEMENT: And it was appreciated.

1 So, for the next agenda, we will put that on
2 there. We will also again put the new chairperson
3 potential as a chairperson.

4 Anything else on the Technical Subcommittee that
5 -- questions or --

6 MR. BUNCH: I have a recommendation or request.
7 For those of us who weren't present when the Commission
8 made recommendations on the MNA, NFA rule, would it be
9 possible to get a copy of what you had said to other
10 Commission Members at that time to new members?

11 CHAIRPERSON CLEMENT: Certainly. I will get that
12 out to the new members.

13 Anything else? I could send out also the last
14 Technical Subcommittee meeting minutes. I think that
15 might be helpful.

16 MR. BUNCH: Thank you.

17 CHAIRPERSON CLEMENT: Anything else from the
18 Technical Subcommittee?

19 Okay. And I'm not sure why we kept this next
20 agenda item, other than that the UST Policy Commission
21 Annual Report did go out, did get signed, did get
22 received. If anybody needs a paper copy, please see
23 Cynthia Miller. Electronic copies went out sometime ago,
24 and that's basically a summary of all the work that we did
25 and DEQ did in 2006. And next year we're going to get it

1 out even sooner.

2 Okay. We're going to change -- 11, summary of
3 meeting action items. We don't have a lot of action
4 items.

5 DEQ's been asked for a brief fact sheet regarding
6 the MNA and NFA rules and the OHA rules.

7 There will be a Financial Subcommittee meeting
8 towards the end of August after the next public meeting
9 regarding the DEQ implementation of the Federal Energy
10 Act.

11 I will distribute the MNA/NFA rule comments and
12 the last Technical Subcommittee meeting minutes.

13 We are all going to examine our hearts to
14 determine if we have the time and willingness to commit to
15 being a Technical Subcommittee Chairperson.

16 I think that's all I have captured, actually.

17 Any other agenda items or, excuse me, action
18 items I didn't capture?

19 Okay. Oh, just a reminder, you do need to finish
20 your Commission training within six months of your
21 appointment. And all I did was went on the web and looked
22 up Arizona boards and commissions training, and it's out
23 of the Governor's Office, so you can sign up that way.
24 Cynthia Miller may be able to help you if you need
25 anything beyond that.

1 Also, we are eligible to have our travel costs
2 reimbursed. Again, Ms. Miller will be able to help you
3 with that. I think it's on the DEQ web site now. I don't
4 think any of us ever do it, but as gas prices go up and
5 particularly those who aren't funded by an organization
6 might be interested in having your travel costs be
7 reimbursed.

8 Other meeting action items?

9 Now a general call to the public. Do we have any
10 public comments?

11 Mr. Vannais.

12 MR. VANNAIS: Leon Vannais with Tierra Dynamics,
13 Inc.

14 I've got three questions. Some of them may
15 require a response, and I don't know if it's going to be
16 today or not.

17 My first question is regarding public documents
18 and the distribution of public documents. I understand
19 the minutes have to be available three days after the
20 meeting, but how about handouts and other materials
21 presented to the Policy Commission that may not be
22 presented to the general public at that time, is there any
23 requirement that that material be provided to the public,
24 for example, the presentation that was just shown?

25 CHAIRPERSON CLEMENT: I don't know if I can

1 respond to that. I don't actually know the answer to
2 that. I would assume they have to be.

3 Can you respond to that?

4 MR. MIKITISH: A short response would be if you
5 have one, it can be made.

6 CHAIRPERSON CLEMENT: Typically the handouts, as
7 I understand it, Cynthia, correct me if I am wrong -- Ms.
8 Miller is in the back of the room there and she does a lot
9 of administrative support. Typically all of our handouts
10 are on that side table, and then typically the Policy
11 Commission gets them by e-mail as attachments before the
12 meeting and then also at our chairs when we sit down.
13 That's typically what happens.

14 Any new materials, Mr. Kern?

15 MR. KERN: Madam Chair, Ron Kern with DEQ.

16 Basically all of these materials will be
17 available to the public. They're post Commission, though,
18 meeting. And we do keep them all on file and they are
19 available to the public. If somebody from the public
20 wants to review them, they can contact Cynthia Miller or
21 they can contact me, and we can set up a time for anybody
22 of the public to come in and review them. That will
23 include Mr. Mikitish's presentation, everything that has
24 gone on here today will be in the back, all public comment
25 documentation will be all available.

1 As far as the minutes that you referenced, real
2 quickly, we keep a recording of these minutes, and Mr.
3 Johnson's recording those right now, and that is available
4 to the public within the three days and meets the open
5 meeting requirements. We will get -- the transcription
6 here eventually will come to us and we will put that in
7 the file. That will be available to the public after it's
8 been approved by the Policy Commission. So, that's kind
9 of the way it goes right now. If there is any questions,
10 people can ask me or Cynthia afterwards.

11 CHAIRPERSON CLEMENT: And it is sincerely our
12 intent that any document generated for or by the
13 Commission be readily available to the public. If there
14 is any issues regarding that, please feel free to bring it
15 to our attention because we are very, very committed to
16 that.

17 MR. VANNAIS: Thank you very much.

18 My second question or comment has to do with the
19 pending OAH rule. It does have specific significance
20 especially to those participants in the State Assurance
21 Fund program. The State Assurance Fund rules, we had a
22 problem initially with, there is no mechanism within the
23 rule process to establish eligibility. The State
24 Assurance Fund rule also states that there is only a
25 certain number of parties that are eligible to file a

1 formal appeal before the Office of Administrative
2 Hearings. Those parties would be owners, operators and
3 volunteers.

4 There has been to my personal knowledge a number
5 of disputes regarding whether or not somebody's an owner
6 or operator or volunteer. Those disputes are ultimately
7 heard by the Office of Administrative Hearings, and that
8 decision of whether or not the party that's in the appeal
9 meets one of those three definitions is carried on and can
10 either participate or they're denied access to the State
11 Assurance Fund.

12 Unfortunately, the proposed rule, as I understand
13 it, allows the DEQ to not forward formal appeal requested
14 from parties wishing to dispute a determination regarding
15 ownership status. So, that is maybe a little bit
16 different than many of the parties that may be involved
17 and the Office of Administrative Hearing process, because
18 we have a second rule out there that also deals with this
19 process, so I'd encourage the Policy Commission and any of
20 its individual members to participate in a public meeting
21 comment period on that on the 31st.

22 I have forgotten what my third comment was, but
23 regarding -- I understand the minutes are posted on the
24 web once they're formalized. It would be fantastic if we
25 get materials that are provided to the Policy Commission

1 Members during that meeting are also posted on the web so
2 there is corresponding, if you need to go back there and
3 see that it's easily accessible, and it should be a PDF
4 and that would be all. Thank you.

5 CHAIRPERSON CLEMENT: Thank you, Mr. Vannais.

6 I think we can't comment on those last two things
7 but we appreciate it.

8 Any other comments from the public?

9 Okay. The next is our agenda items for the next
10 meeting, and our next meeting is scheduled for
11 August 22nd.

12 Any additional agenda items that anyone in the
13 Commission would like to see included in the next meeting,
14 you can raise them now or just e-mail them to me, and I
15 gave my cards out.

16 And then, Cynthia, on the US -- on the UST
17 Division web site, we actually have our own place, the
18 Policy Commission, and the new Policy Commission Members
19 are posted there so the contact information, if you don't
20 have it readily available, you can always go to the DEQ
21 Tank Division web site, Policy Commission, and all the
22 contact information is there. So if you lose my card, or
23 whatever, you can always figure that out that way.

24 Any agenda items, though? Anybody, any new
25 agenda items that we want to be sure to cover?

1 Typically what you see here, you know, this will
2 be the general framework and then anything we add to this.

3 What about the next Commission Meeting? It is
4 scheduled for August 22nd. Is there -- from the
5 Commission Members, do we want to hold that meeting, do we
6 want to move that meeting, our next meeting to the
7 September date? Is there an opinion here?

8 MS. CHABERSKI: I don't want to spoil the party,
9 but maybe we should meet -- first of all, there are a lot
10 of new members, then we have an August meeting and the
11 energy policy and some decisions to make on subcommittees,
12 so it might be a value to get some of that in place.

13 CHAIRPERSON CLEMENT: Thank you. Mr. Bunch?

14 MR. BUNCH: I'm not going to -- I was going to
15 recommend September, only because we learned a lot through
16 the possible stakeholder meetings and Financial
17 Subcommittee meetings, but I think Cathy makes a good
18 point about getting the new members involved, bringing
19 them up to speed, and so I would be in support of an
20 August meeting.

21 CHAIRPERSON CLEMENT: Mr. Findley?

22 MR. FINDLEY: I have no particular opinion about
23 the meeting. It would be fine.

24 CHAIRPERSON CLEMENT: Now that you have a backup,
25 or an official backup --

1 MS. HUDDLESTON: One of us will be here.

2 CHAIRPERSON CLEMENT: Ms. Huddleston, sorry, for
3 the sake of the court reporter. One of you will be here.

4 Mr. McNeely.

5 MR. MC NEELY: I can go either way. I think
6 September would be a more valuable meeting, because we are
7 going to have a Financial Subcommittee in late August.

8 CHAIRPERSON CLEMENT: It probably won't happen,
9 but I like the idea -- I like Cathy's idea of potentially
10 having a short meeting. What I will do is I will poll the
11 other new members and see about their availability. If
12 the two other new members are not available that day, I
13 will contact both of you and see if we can, you know, find
14 something else, because really that's the key. If we
15 can't bring the new members to that next meeting there is
16 probably not a lot of benefit to anybody because you've
17 all sat here and heard all of this stuff today.

18 MS. CHABERSKI: Can you send someone in your spot
19 at some other meetings I attend, you can send a proxy?

20 MS. HUDDLESTON: The statute provides for that,
21 for instance, the statute provides that the Attorney
22 General is a member or his designee. I'm not certain your
23 position, the portion of your seat, you are appointed.

24 MS. CHABERSKI: I do not. I'm just asking.

25 MR. MC NEELY: Just DEQ and the AG's office, so

1 you could send someone to take notes but they can't vote.

2 CHAIRPERSON CLEMENT: They can't participate as a
3 Commission Member.

4 MS. CHABERSKI: We could phone in and physically
5 be present?

6 CHAIRPERSON CLEMENT: Yes, and that is
7 participating, and you could ask Andrea how well it works,
8 but you do get to participate that way, and we greatly
9 encourage active participation involvement.

10 Okay. So, right now tentatively the next
11 Underground Storage Tank Policy Commission will be August
12 22nd. I will poll the new members and make sure they're
13 able to attend that date, and then we may have to
14 reconfigure the next meeting date.

15 The worst possible is that the actual monthly
16 September meeting, which I don't have off the top of my
17 head, the fourth Wednesday in September will be the next
18 Policy Commission meeting.

19 And on that note, any other comments, questions?

20 We are officially adjourned. Thank you
21 everybody.

22 (10:55 a.m.)

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C E R T I F I C A T E

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I HEREBY CERTIFY that the proceedings had
upon the foregoing hearing are contained in the shorthand
record made by me thereof and that the foregoing 79 pages
constitute a full true and correct transcript of said
shorthand record all done to the best of my skill and
ability.

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DATED at Phoenix, Arizona, this 25th day of
July, 2007.

Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477